



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
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CONSUMER PROTECTION DIVISION
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Press Release

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**KANAWHA COUNTY CIRCUIT COURT REJECTS CROSS COUNTRY BANK'S
SUIT TO ENJOIN ATTORNEY GENERAL MCGRAW'S OFFICE FROM
USING AFFIDAVIT OF KEN MARINO, ITS FORMER COUNSEL,
IN CONSUMER PROTECTION INVESTIGATION**

On March 1, 2004, Delaware-based subprime lender Cross Country Bank and Applied Card Systems, sued to enjoin Attorney General Darrell McGraw's office from using the written affidavit of its former general counsel, Kenneth Marino, in a consumer protection investigation. The affidavit was originally prepared by the New York Attorney General's office and was obtained by McGraw's office after it became a public record of the Florida Attorney General's office. Cross Country Bank and Applied Card Systems are owned by Rocco A. Abessinio.

Marino sued Cross Country Bank, Applied Card Systems, and Abessinio in January, 2002, alleging that he was wrongfully fired after the company thwarted his efforts to reform its unlawful practices. According to an opinion published by the United States District Court of Delaware on February 14, 2003, in *Marino v. Cross Country Bank, et al.*, Marino alleged in his suit that the mismanagement, misconduct, and illegal activities of the companies "was far more extreme and pervasive than Marino had previously been led to believe." Marino further alleged that he "met with unanticipated and immovable resistance from the companies and was wrongfully terminated for investigating and threatening to uncover unethical and illegal banking activities by the defendants."

After a full hearing on March 5, 2004, Kanawha County Circuit Judge James C. Stucky ruled that the Marino affidavit was not protected by the attorney-client privilege, as alleged by Cross Country Bank, and refused to enjoin McGraw's office from using the affidavit in its investigation.

Although Cross Country Bank and Applied Card Systems initially announced their intention to appeal, on March 10, 2004, they advised the court by letter that they decided not to appeal after the Charleston Gazette obtained the Marino Affidavit from public officials in Florida and quoted excerpts from it in a March 6 news story.

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